IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4721 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWATIBEN SANMUKHBHAI JARIWALA W/O SANMUKHBHAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr.A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to tender original documents on record.

Heard learned Advocate Mr. N.M. Kapadia for the petitioner and learned A.G.P. Mr. A.J.Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 9-6-1999 passed by the Commissioner of Police,Surat (the respondent no.1) against the detenu-Sanmukhbhai Jaikishandas Jariwala in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed by one Bhagwatiben Sanmukhbhai Jariwala-the wife of detenu under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 23 inter alia indicate that a prohibition case vide Cr no.303/99 was registered against the detenu on 2-5-1999 at Rander Police Station and Indianmade foreign liquor has been seized from the possession of the detenu. That the detenu was released on bail on 4-5-1999 and the matter is pending investigation.

2.1 The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 3-6-1999 regarding bootlegging activities of the detenu and have related the alleged incidents dated 27-5-1999 and 2-6-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the detenu from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended by the learned Advocate for the petitioner on behalf of the detenu at the Bar that impugned order suffers from the vice of non application of mind inasmuch as the document supplied to the detenu alongwith the order of detention contained a statement of witness-Mukesh alias Mukesh Dadhi Champaklal recorded by Police Sub-Inspector Rander Police Station dated 3-4-1999. That the copy of the said statement is supplied to the detenu alongwith the grounds of detention and accompanied documents. That the case against the detenu was registered on 3-5-1999 and the said statement being of 3-4-1999, on account of said discrepancy detenu made representation dated 8-7-1999 to the State Government and claimed copy of the statement of Mukesh alias Mukesh Dadhi Champaklal dated 3-5-1999 as

stated in the index of the original accompanying documents. That the letter dated 4-8-1999 addressed by the detaining authority which is tendered on record suggests that said representation of detenu dated 8-7-1999 was forwarded to the State Government and received by the detaining authority. The Commissioner of Police, Surat, however, vide covering letter dated 4-8-1999, has returned the same to the State Government on the ground that the detention order having been approved has become functus officio. That the communication dated 7-8-1999 addressed by the Section Officer, Home Department(Special), State of Gujarat to the detenu suggests that representation dated 8-7-1999 has been rejected. Thus, despite the representation there is neither clarification nor is the detenu supplied with the copy of the said statement dated 3-5-1999.

Learned Advocate Mr. N.M. Kapadia has urged that on account of said non clarification or non supply of relevant document, the detenu is deprived of an opportunity of making effective representation which amounts to violation of constitutional mandate under Article 226 of the Constitution, and as such, the continued detention of the detenu has become illegal.

Learned AGP Mr. A.J.Desai has attempted to salvage the issue by submitting that copy of the statement of witness Mukesh alias Mukesh Dadhi Champaklal Modi purported to be recorded on 3-4-1999 is a document where on account of a slip of pen the Police Sub Inspector has put the date 3-4-1999 instead of 3-5-1999. That in the reverse side of the said statement, further statement of the said witness is recorded and in the said statement, the previous statement has been referred to as a statement dated 3-5-1999. Thus, merely a slip of pen on the part of the Police Sub Inspector in putting the date on a statement cannot cause any prejudice to the right of the detenu to make effective representation guaranteed under Article 22(5) of the Constitution. The submission urged by the learned A.G.P. Mr. Desai though with utmost force can hardly be accepted in the context of reply sent by the State Government dated 10-8-1999 and communication dated 4-8-1999 of the detaining authority tendered on record. The concerned officer of the State Government as well as the detaining authority both ought to have communicated the error caused by slip of pen on the part of the Police Sub Inspector, Rander Police Station in putting the date on the statement of witness Mukesh as of 3-4-1999 on receipt of representation dated 8-7-1999. However instead of clarifying such an error, the detaining authority as well as the concerned officer

of State Government have acted mechanically in considering the representation and rejecting the same. In view of the same, it is difficult to uphold the submission of Mr. Desai. The detenu cannot be expected to assume such a mistake and non clarification of the said error or non clarification of said error; or non supply of document with correct date of 3-5-1999 with an explanation on the part of the detaining authority as well as the State Government amounts to depriving the detenu of an opportunity to make effective representation is in violation of Article 22(5) of the Constitution, and as such, the impugned order cannot be sustained.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 9-6-1999 passed by the Commissioner of Police, Surat (respondent no.1) against the detenu is hereby quashed and set aside. The detenu-Sanmukhbhai Jaikishandas Jariwala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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